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10/573,065	03/23/2006	Eric Jonsen	US030362US	6992

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EXAMINER

BEHRINGER, LUTHER G

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/573,065
Filing Date: March 23, 2006
Appellant(s): JONSEN, ERIC

W. Brinton Yorks, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/11/2008 appealing from the Office action mailed 05/13/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Patent application number 10/574,342.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,101,413	Olson et al.	08-2000
6,018,683	Verness et al.	01-2000
5,989,053	Wheeler	11-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claim(s) 1 – 3, 5 – 7, 9, 12 – 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Olson et al. (US 6,101,413)**.

Regarding **claim(s) 1, 5, 6, and 16**, Olson et al. discloses a method for identifying an electrode type in an automatic external defibrillator but fails to provide a shaped conductive label on an automatic external defibrillator electrode package which includes an electrical connector for coupling an electrode to the defibrillator a shaped conductive label having a conductive path that uniquely identifies a type of electrode contained therein; and coupling one or more pins to the shaped conductive label when the automatic external defibrillator electrode package is coupled to the defibrillator.

4. To have considered the package identification element **400** disclosed by Olson et al. to be a label with a particular shape would have been obvious to one of ordinary skill since Olson et al. states that the package identification element **400** may be separately attached to the package (Figure 9; Col.8, Lines 32 – 34), just like a label. One of ordinary skill in the art at the time of the invention would have found it obvious to attach the label externally, since it provides a readily recognizable means for identification.

Regarding **claim(s) 2, 13 and 19**, Olson et al. does not explicitly disclose the step of: sensing a shape of the shaped conductive label with the one or more conductors to ascertain the type of electrode contained therein (Figures 9 – 11).

5. However, Olson et al. does teach the use of a sense resistor **410** and resistor **406** combination (Figures 9 – 10). Utilizing one or more conductors to establish a connection (short circuit, zero resistance) or lack thereof (open circuit, infinite resistance) on a shaped conductive label to establish its shape would have been an obvious extension of the skill set of one skilled in the art.

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Regarding **claim(s) 3, 9, 14 and 20**, Olson et al. discloses the step of: selecting an operating mode for the automatic external defibrillator based on the shape of the shaped conductive label (Column 9, Lines 49 – 51).

Regarding **claim 7**, Olson et al. discloses an electrode cartridge receptacle to accept each of the one or more electrode cartridges, said electrode cartridge receptacle including one or more sensing pins to couple in a unique pattern to the one or more shaped conductive labels when each of the one or more electrode cartridges is inserted into the electrode cartridge receptacle (Figure 1 and 11).

Regarding **claim 12**, Olson et al. fails to disclose wherein each of the one or more shaped conductive labels comprises a unique shape.

6. To have considered the package identification element **400** disclosed by Olson et al. to be a label with a particular shape would have been obvious to one of ordinary skill since Olson et al. states that the package identification element **400** may be separately attached to the package (Figure 9; Col.8, Lines 32 – 34), just like a label. One of ordinary skill in the art at the time of the invention would have found it obvious to attach the label externally, since it provides a readily recognizable means for identification.

Regarding **claim(s) 15 and 17**, Olson et al. discloses wherein each of the automatic external defibrillator electrode cartridges includes two contacts for electrically connecting patient electrodes to the automatic external defibrillator and the automatic external defibrillator electrode cartridge receptacle includes two contacts for electrically connecting the automatic external defibrillator to the two contacts on each of the automatic external defibrillator electrode cartridges, and said two contacts on the

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automatic external defibrillator electrode cartridge receptacle are different than said one or more sensing pins (Figure 1 and 11).

7. Claim(s) 4, 8, 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Olson et al. (US 6,101,413)** in view of **Verness et al. (US 6,018,683)**.

Regarding **claim(s) 4 and 8**, Olson et al.'s invention fails to disclose wherein said sensing step further comprises redundantly sensing two or more portions of said shape of the shaped conductive label with two or more conductors to ascertain the type of electrode contained therein.

However, Verness et al. teaches wherein said sensing step further comprises redundantly sensing two or more portions of said shape of the shaped conductive label with two or more conductors to ascertain the type of electrode contained therein (Column 3, Lines 32 – 35).

8. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the disclosure of Olson et al. with the teachings of Verness et al. thereby increasing the reliability of the conductive connection between the connector and the pins and the subsequent selection by the automatic emergency defibrillator of the appropriate amplitude of electrical stimulation to apply.

Regarding **claim(s) 10 and 18**, Olson et al.'s invention fails to disclose wherein each of the one or more sensing pins comprises a spring-loaded pin to maintain said each sensing pin in electrical contact with the one or more shaped conductive labels

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when each of the one or more electrode cartridges is inserted into the electrode cartridge receptacle.

However, Verness et al. teaches wherein each of the one or more sensing pins comprises a spring-loaded pin to maintain said each sensing pin in electrical contact with the one or more shaped conductive labels when each of the one or more electrode cartridges is inserted into the electrode cartridge receptacle (Column 9, Lines 58 – 67).

9. It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the disclosure of Olson et al. with the teachings of Verness et al. thereby increasing the reliability of the conductive connection between the connector and the pins by maintaining a constant pressure on the conductive label.

10. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Olson et al. (US 6,101,413)** in view of **Wheeler (US 5,989,053)**.

Regarding **claim 11**, Olson et al.'s invention fails to disclose wherein each of the one or more shaped conductive labels comprises a gold-plated metal.

However, Wheeler teaches wherein each of the one or more shaped conductive labels comprises a gold-plated metal (Column 1, Lines 35 – 37).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the disclosure of Olson et al. with the teachings of Wheeler as it is well known in the art that a clean, un-corroded, electrical connection, that can be achieved by plating a metal with gold, produces a more reliable and efficient electronic circuit.

(10) Response to Argument

Appellants arguments with respect to claims 1 – 20 have been fully considered but they are not persuasive .

Specifically, appellant argues that identification element **400, 406, 418** provided in the Olson et al. patent (US 6,101,413) (Figs. 9 – 11), (A) is a “standard electrical component, which all need to be wired to a measuring means” and argues that they (B) are disclosed as separately provided (Col. 8, Lines 32 – 34; Col. 9, Lines 23 – 26), but are not disclosed as to their location when separately provided.

Regarding argument (A), Olson discloses the identification element **406** in figure 10 as being a resistor. One of ordinary skill in the art would recognize that a resistor is a passive circuit element, not requiring a power source or associated wiring connections to maintain its value. Therefore, a resistive element is analogous to the passive conductive label of the appellant’s invention, which also requires a wired connection when determining the shape of the label through resistive means (detecting infinite resistance through an open circuit or very low resistance through a shorted connection between pins **42a - 42d**).

Regarding argument (B), one of ordinary skill in the art would recognize that identification element **400, 406, 418** would of necessity be required to be attached to the electrode package to render utility to the invention of Olson, a method of identifying defibrillation electrodes. Were the identification element not attached to the electrode, the invention would be rendered inoperative.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Luther G Behringer/
Examiner, Art Unit 3766

Conferees:

/Carl H. Layno/

Supervisory Patent Examiner, Art Unit 3766

/Angela D Sykes/

Supervisory Patent Examiner, Art Unit 3762